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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARROLL KIRBY,

Plaintiff,

Case No. C09-0713-JCC

v.

HOUSING AUTHORITY OF EVERETT;
LORNA S. CORRIGAN and "JOHN
DOE" CORRIGAN, wife and husband;
NEWTON AND KIGHT, LLP, Attorneys
at Law, a Washington Professional Limited
Liability Partnership, BUD ALKIRE and
"JANE DOE" ALKIRE, husband and wife,

ORDER

Defendants.

This matter comes before the Court on Housing Authority of Everett and Bud and Jan Doe Alkires' motion for summary judgment (Dkt. No. 20), Plaintiff's response (Dkt. No. 29), and Defendants' reply (Dkt. No. 31). Having considered the parties' briefing and the relevant record, the Court finds no genuine issue of material fact and hereby GRANTS Defendants' motion, for the reasons explained herein.

1 **I. BACKGROUND**

2 Unless otherwise indicated, the following facts are undisputed or are taken in the light
3 most favorable to Plaintiff, the nonmoving party:

4 Plaintiff leased a residential property owned by the Housing Authority of Everett
5 (“EVHA”). (Defs’. Mot. (Dkt. No. 20 at 2).) Defendant Bud Alkire is the Director of EVHA.¹
6 (Decl. (Dkt. No. 21 at 1).) The rental property was unsubsidized and Plaintiff did not receive
7 benefits under the Housing Choice Voucher Program at any time relevant to this matter. (Defs’.
8 Mot. (Dkt. No. 20 at 2).)

9 On May 7, 2008, after Plaintiff had fallen behind on rent payments, Defendants hired
10 attorney Lorna Corrigan² to serve notice on Plaintiff demanding that he pay the delinquent rent
11 or vacate the property within three days. (Defs’. Mot. (Dkt. No. 20 at 2).) After giving Plaintiff
12 the notice, Defendants initiated a summons and complaint for unlawful detainer in state court.
13 (State Ct. Compl., 5 (Dkt. No. 22 at 62).) Plaintiff requested dismissal of the action on the
14 grounds that he had been served with a form that did not meet Washington statutory
15 requirements. (Compl. (Dkt. No. 1 at 7)); WASH. REV. CODE § 59.18.365. Specifically, he
16 alleged that the summons was out of date and did not inform Plaintiff that he had the right to
17 respond to the complaint via facsimile or mail. (Compl. (Dkt. No. 1 at 7).) Plaintiff brought the
18 error to Ms. Corrigan’s attention, who acknowledged that a mistake had been made. Defendants
19 agreed to voluntarily dismiss the action. (*Id.*)

20 Following the dismissal of the state court action, Plaintiff filed this action in federal
21 court, seeking damages and remedies from Defendants EVHA and Alkire pursuant to 42 U.S.C.
22 § 1983. Plaintiff claims that the use of the improper summons violates: (1) the federal Civil

23 ¹ His anonymous wife is also a Defendant.

24 ² Ms. Corrigan is also a Defendant in this case, but did not join the current motion for summary judgment.

1 Rights Act, 42 U.S.C. § 1983; (2) the federal Fair Debt Collection Practices Act (“FDCPA”);
2 and (3) the Washington Consumer Protection Act (“WCPA”) WASH. REV. CODE § 19.86.
3 (Compl. ¶6.6 (Dkt. No. 1 at 11–17).) In his Response, Plaintiff adds a claim concerning quiet
4 enjoyment of one’s home. (Dkt. No. 29 at 3.)

5 Defendants now move for summary judgment on the 42 U.S.C. § 1983 and WCPA
6 claims. Specifically, Defendants allege that: (i) they did not violate any of Plaintiff’s
7 Constitutional or statutory rights; (ii) Plaintiff failed to comply with the notice requirements for
8 the WCPA claim; and (iii) Defendant Alkire is entitled to qualified immunity. Because the Court
9 concludes that Plaintiff’s rights were not violated, the Court declines to address Plaintiff’s state
10 law claims for lack of subject matter jurisdiction and Defendants’ qualified immunity defense
11 because it is moot.

12 **II. SUMMARY JUDGMENT STANDARD**

13 Summary judgment “should be rendered if the pleadings, the discovery and disclosure
14 materials on file, and any affidavits show that there is no genuine issue as to any material fact
15 and that the [moving party] is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). A
16 genuine issue of material fact exists when the evidence is such that a reasonable jury could return
17 a verdict for the nonmoving party. *In re Caneva*, 550 F.3d 755, 761 (9th Cir. 2008) (*citing*
18 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The Court views the evidence in the
19 light most favorable to the non-moving party. *Id.*

20 A defendant moving for summary judgment bears the initial responsibility of informing
21 the district court of the basis for its motion and identifying those portions of the record that
22 demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
23 317, 323 (1986). To defend against the motion, the plaintiff must then go “beyond the pleadings”
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1 and demonstrate ““specific facts [in the record] showing that there is a genuine issue for trial.””

2 *Id.* at 24 (quoting FED. R. CIV. P. 56(e)(2)).

3 **III. DISCUSSION**

4 **A. Section 1983 Claims**

5 To state a claim under 42 U.S.C. § 1983, Plaintiff must show that he has suffered a
6 violation of federal constitutional or statutory rights, and that the violation was proximately
7 caused by a person acting under color of state or federal law. *See Crumpton v. Gates*, 947 F.2d
8 1418, 1420 (9th Cir. 1991). Plaintiff alleges that the improper summons deprived him of his
9 Section 8 subsidized housing rights and his Due Process rights. Neither Plaintiff’s Section 8
10 claim nor his Due Process claim amount to even the barest showing that a federal right was
11 violated.³

12 Plaintiff’s claim that he was deprived of his Section 8 Housing benefits by Defendants’
13 improper summons is woefully unsupported. Plaintiff has never shown that he received Section 8
14 benefits to begin with, let alone that he was deprived of them by Defendants’ improper
15 summons.⁴ Plaintiff failed to rebut that allegation in his Response, and the Court takes it to be
16 conceded. No reasonable juror could find that Defendants’ defective summons deprived Plaintiff
17 of something to which he was not entitled. *See Anderson*, 477 U.S. at 248–50.

18 Plaintiff’s Due Process claims are equally threadbare. The Constitution prohibits a state
19 from depriving an individual of life, liberty, or property without due process of law. U.S. CONST.
20 amend. XIV, § 1. Plaintiff claims that his procedural due process rights were violated when

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22 ³ Plaintiff’s utterly fantastical claim, asserted for the first time in his Response, that there exists a
23 constitutional right to quiet enjoyment of one’s home that could be violated by service of a summons is
24 both unsupported and meritless.

25 ⁴ This program, often referred to as “Section 8,” is one of several federal assisted housing programs
26 originating from the United States Housing Act of 1937. 42 U.S.C. § 1437(8)(o) (2008).

1 Defendants did not follow statutory procedures for initiating the original unlawful detainer
2 action. But Plaintiff has failed to allege that he was deprived of any protected interest
3 whatsoever. Without some showing that a protected interest is implicated, Plaintiff has created
4 no genuine issue of material fact by which a reasonable jury could find in his favor. *See*
5 *Anderson*, 477 U.S. at 248–50.

6 Accordingly, Plaintiff's constitutional claims against Defendants EVHA, Bud Alkire, and
7 Jane Doe Alkire are DISMISSED.

8 **B. Fair Debt Collection Practices Act Claim**

9 In Plaintiff's Response, he concedes that he "did not intend to allege the FDCPA's
10 application to these defendants." (Dkt. No. 29 at 1.) Accordingly, Plaintiff's FDCPA claims
11 against Defendants EVHA, Bud Alkire, and Jane Doe Alkire are DISMISSED.

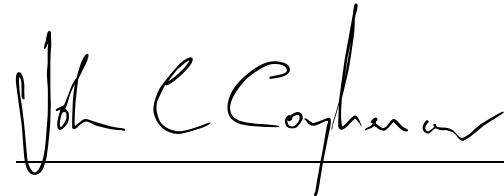
12 **C. Washington Consumer Protection Act Claims**

13 Finally, Plaintiff brings a claim against Defendants under the Washington State
14 Consumer Protection Act ("WCPA"). WASH. REV. CODE § 19.86. Non-diversity state claims do
15 not come under the Court's original jurisdiction. The only possible basis in which the Court could
16 exercise jurisdiction over Plaintiff's WCPA claims would be under federal supplemental
17 jurisdiction pursuant to 28 U.S.C. § 1337. Under § 1337(c)(3), a district court may decline to
18 exercise supplemental jurisdiction over claims if it has dismissed all claims over which it has
19 original jurisdiction. Here, because all federal claims against Defendants EVHA, Bud Alkire, and
20 Jane Doe Alkire have been dismissed as a matter of law, the Court declines to exercise
21 supplemental jurisdiction over Plaintiffs' remaining state claim. Accordingly, Plaintiffs' WCPA
22 claim against Defendants EVHA, Bud Alkire, and Jane Doe Alkire is DISMISSED without
23 prejudice for lack of jurisdiction.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendants' Motion for Summary Judgment (Dkt. No. 20) is
3 hereby GRANTED. All Claims against Defendants Housing Authority of Everett, Bud Alkire, and
4 Jane Doe Alkire are DISMISSED.

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6 DATED this 5th day of January, 2010.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE